

FIRST REGULAR SESSION

SENATE BILL NO. 557

94TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR LOUDON.

Read 1st time February 21, 2007, and ordered printed.

TERRY L. SPIELER, Secretary.

2287S.01I

AN ACT

To repeal sections 650.055 and 650.056, RSMo, and to enact in lieu thereof two new sections relating to the DNA profiling system, with penalty provisions.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 650.055 and 650.056, RSMo, are repealed and two new
2 sections enacted in lieu thereof, to be known as sections 650.055 and 650.056, to
3 read as follows:

650.055. 1. Every individual[,] **who pleads guilty or nolo contendere**
2 **to or is convicted or found guilty** in a Missouri circuit court[, who pleads
3 guilty to or is found guilty] of a felony or [any] **misdemeanor** offense [under
4 chapter 566, RSMo,] or **an individual who** has been determined [beyond a
5 reasonable doubt] to be a sexually violent predator pursuant to sections 632.480
6 to 632.513, RSMo, shall have a blood, **buccal swab**, or **other** scientifically
7 accepted biological sample collected for purposes of DNA profiling analysis:

8 (1) Upon entering or before release from the department of corrections
9 reception and diagnostic centers; or

10 (2) Upon entering or before release from a county jail or detention facility,
11 state correctional facility, or any other detention facility or institution, whether
12 operated by private, local, or state agency, or any mental health facility if
13 committed as a sexually violent predator pursuant to sections 632.480 to 632.513,
14 RSMo; or

15 (3) When the state accepts a person from another state under any
16 interstate compact, or under any other reciprocal agreement with any county,
17 state, or federal agency, or any other provision of law, whether or not the person
18 is confined or released, the acceptance is conditional on the person providing a
19 DNA sample if the person was convicted of, pleaded guilty to, or pleaded nolo

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

20 contendere to an offense in any other jurisdiction which would be considered a
21 qualifying offense as defined in this section if committed in this state, or if the
22 person was convicted of, pleaded guilty to, or pleaded nolo contendere to any
23 equivalent offense in any other jurisdiction; or

24 (4) If such individual is under the jurisdiction of the department of
25 corrections. Such jurisdiction includes persons currently incarcerated, persons
26 on probation, as defined in section 217.650, RSMo, and on parole, as also defined
27 in section 217.650, RSMo.

28 2. The Missouri state highway patrol and department of corrections shall
29 be responsible for ensuring adherence to the law.

30 3. Any person required to provide a DNA sample pursuant to this section
31 shall be required to provide such sample, without the right of refusal, at a
32 collection site designated by the Missouri state highway patrol [and], the
33 department of corrections, **or the law enforcement agency of the county or**
34 **city not within a county in which the conviction, finding of guilty, plea**
35 **of guilty, or plea of nolo contendere occurred.**

36 4. Authorized personnel collecting or assisting in the collection of samples
37 shall not be liable in any civil or criminal action when the act is performed in a
38 reasonable manner. Such force may be used as necessary to the effectual carrying
39 out and application of such processes and operations.

40 5. **For individuals included in subsection 1 this section, the**
41 **knowing refusal or knowing failure to provide a DNA sample is a class**
42 **A misdemeanor.**

43 6. The enforcement of these provisions by the authorities in charge of
44 state correctional institutions and others having custody [or], jurisdiction, **or**
45 **supervision** over those who have been convicted of, **found guilty of**, pleaded
46 guilty to, or pleaded nolo contendere to felony **or misdemeanor** offenses which
47 shall not be set aside or reversed is hereby made mandatory. The board of
48 probation or parole shall recommend that an individual who refuses to provide
49 a DNA sample have his or her probation or parole revoked. In the event that a
50 person's DNA sample is not adequate for any reason, the person shall provide
51 another sample for analysis.

52 [3.] 7. The procedure and rules for the collection, analysis, storage,
53 expungement, use of DNA database records and privacy concerns shall not
54 conflict with procedures and rules applicable to the Missouri DNA profiling
55 system and the Federal Bureau of Investigation's DNA databank system.

56 [4.] 8. **Knowingly** unauthorized [uses or] **use of, knowing attempt**
57 **to use, knowing** dissemination of **or attempt to disseminate** individually
58 identifiable DNA information in a **DNA** database for purposes other than
59 criminal justice or law enforcement is a class A misdemeanor. **Knowingly**
60 **unauthorized tampering with, knowing attempt to tamper with, or**
61 **other knowingly unauthorized use of, knowing attempt to use, or**
62 **knowing dissemination of or attempt to disseminate any sample**
63 **collected for the DNA profiling system is a class A misdemeanor.**

64 [5.] 9. Implementation of sections 650.050 to 650.100 shall be subject to
65 future appropriations to keep Missouri's DNA system compatible with the Federal
66 Bureau of Investigation's DNA databank system.

67 [6.] 10. All DNA records and biological materials retained in the DNA
68 profiling system are considered closed records pursuant to chapter 610, RSMo. All
69 records containing any information held or maintained by any person or by any
70 agency, department, or political subdivision of the state concerning an
71 individual's DNA profile shall be strictly confidential and shall not be disclosed,
72 except to:

73 (1) Peace officers, as defined in section 590.010, RSMo, and other
74 employees of law enforcement agencies who need to obtain such records to
75 perform their public duties;

76 (2) The attorney general or any assistant attorneys general acting on his
77 or her behalf, as defined in chapter 27, RSMo;

78 (3) Prosecuting attorneys or circuit attorneys as defined in chapter 56,
79 RSMo, and their employees who need to obtain such records to perform their
80 public duties; or

81 (4) Associate circuit judges, circuit judges, judges of the courts of appeals,
82 supreme court judges, and their employees who need to obtain such records to
83 perform their public duties.

84 [7.] 11. Any person who obtains records pursuant to the provisions of this
85 section shall use such records only for investigative and prosecutorial purposes,
86 including but not limited to use at any criminal trial, hearing, or proceeding; or
87 for law enforcement identification purposes, including identification of human
88 remains. Such records shall be considered strictly confidential and shall only be
89 released as authorized by this section.

90 [8.] 12. An individual may request expungement of his or her DNA
91 sample and DNA profile through the court issuing the reversal or dismissal. A

92 certified copy of the court order establishing that such conviction has been
93 reversed or guilty plea or plea of nolo contendere has been set aside shall be sent
94 to the Missouri state highway patrol crime laboratory. Upon receipt of the court
95 order, the laboratory will determine that the requesting individual has no other
96 qualifying offense as a result of any separate plea or conviction prior to
97 expungement.

98 (1) A person whose DNA record or DNA profile has been included in the
99 state DNA database in accordance with this section, section 488.5050, RSMo, and
100 sections 650.050, 650.052, and 650.100 may request expungement on the grounds
101 that the conviction has been reversed, or the guilty plea or plea of nolo contendere
102 on which the authority for including that person's DNA record or DNA profile was
103 based has been set aside.

104 (2) Upon receipt of a written request for expungement, a certified copy of
105 the final court order reversing the conviction or setting aside the plea and any
106 other information necessary to ascertain the validity of the request, the Missouri
107 state highway patrol crime laboratory shall expunge all DNA records and
108 identifiable information in the database pertaining to the person and destroy the
109 DNA sample of the person, unless the Missouri state highway patrol determines
110 that the person is otherwise obligated to submit a DNA sample. Within thirty
111 days after the receipt of the court order, the Missouri state highway patrol shall
112 notify the individual that it has expunged his or her DNA sample and DNA
113 profile, or the basis for its determination that the person is otherwise obligated
114 to submit a DNA sample.

115 (3) The Missouri state highway patrol is not required to destroy any item
116 of physical evidence obtained from a DNA sample if evidence relating to another
117 person would thereby be destroyed.

118 (4) Any identification, warrant, arrest, or evidentiary use of a DNA match
119 derived from the database shall not be excluded or suppressed from evidence, nor
120 shall any conviction be invalidated or reversed or plea set aside due to the failure
121 to expunge or a delay in expunging DNA records.

650.056. Any evidence leading to a **plea of guilty, plea of nolo**
2 **contendere, finding of guilt, or** conviction of [a felony] **an offense** described
3 in subsection 1 of section 650.055 which has been or can be tested for DNA shall
4 be preserved by the investigating law enforcement agency.